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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 18 January 2018

B e f o r e:

LORD JUSTICE TREACY

MR JUSTICE JEREMY BAKER

HIS HONOUR JUDGE BIDDER QC
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A

v

FARHANA AHMED

Mr J Wright QC & Mr T Cray appeared on behalf of the **Attorney General**

Mr H Zahir appeared on behalf of the **Offender**

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J U D G M E N T
(Approved)

LORD JUSTICE TREACY:

1. This is a reference by the Attorney General of a sentence he considers unduly lenient.
2. On 25 September 2017 the offender pleaded guilty at the Central Criminal Court to four offences contrary to the Terrorism Act 2006. She was sentenced on 7 November 2017 and received concurrent two year sentences of imprisonment suspended for two years. The offences arose from the offender's conduct in a Facebook group between September and November 2015. Count 1 was a charge of encouraging terrorism contrary to section 1 of the 2006 Act between 21 September and 24 November 2015. Counts 2, 3 and 4 alleged dissemination of a terrorist publication or publications contrary to section 2 of the Act on or about 14, 15 and 19 October 2015 respectively.
3. Between September and November 2015, this offender posted and disseminated terrorist material in support of the so-called Islamic State ("IS") using a closed Facebook group called Power Strangers. It describes itself as:

"A pro-IS group, the purpose of it is to connect Mawhideen brothers from different parts of the world and to help each other."
4. The offender accepted that at the relevant time she intended to encourage others to commit, prepare and instigate acts of terrorism in support of IS. Count 1 related to a number of posts she made to the group. Counts 2 to 4 related to links she posted which permitted further access to written and audio IS propaganda.
5. There was a written basis of plea. In relation to Count 1 it was accepted that during the period, the offender posted 19 items on Facebook, but it was disputed that three of them were statements encouraging terrorism. In addition, an issue was raised as to how many posts gave direct encouragement and how many gave indirect encouragement. As to the latter point, the sentencing judge indicated that it made no material difference, and the parties did not dissent. He did not rule on the former point and so we proceed on the basis

that he sentenced in accordance with the written basis of plea in those respects.

6. The offender is a British national. When arrested, she was living in north London. She is married and the mother of five children aged between six and 16. She was separated from her husband and was at the material time effectively the sole carer for the children. Prior to the offending, she had been evicted from her home and placed in temporary accommodation. During that period, she had been subjected to racial harassment and abuse, which had been reported to the police and other authorities. She had required further rehousing as a result. In a lengthy and eloquent letter written to the judge, she explained this background more fully as a trigger for her subsequent actions. The judge accepted the letter as genuine, but it is clear that this offender at the relevant time had developed an extremist mindset.

7. About three weeks before her postings in support of Isis began, she and her children had travelled to Turkey, where her husband lived, but were refused entry. The offender used the pseudonym of Kay Adam throughout her involvement with the group. In order to become a member of the group, a user had to have an invitation from an existing member. Between September and November 2015, membership of the group increased from 721 to 1,480 users. The group had seven administrators, but this offender was not one of them.

The group's Facebook page encourages members to:

"Share beneficial posts as much as you can, like Jihadi magazines, tips and tricks, and evidences from Qu-ran and Sunnah to help each other tackling enemies ..."

8. Rules were in place to prevent or forestall outside scrutiny of the group. A police officer, however, was able to gain access to the group, including the posts and publications made accessible by its members. Material posted and shared within Power Strangers encouraged

members to join the Mujahideen, to emigrate to IS so as to fulfil Jihad, and to undertake terrorism in their home states. The site made available publications giving instructions on carrying out terrorist acts, including bomb making manuals, the Anarchist's Cookbook, and how to carry out a stabbing. There was guidance as to computer and mobile phone security. Propaganda material included "Hijrah (migration in the cause of Allah) to the Islamic State", Dabiq magazine, an extremist publication, and different formats of a speech by Mohammed Al-Adnani, now deceased, an official spokesperson and senior leader of IS.

9. The material examined showed that this offender was an active member of the group concerned. It is clear, as we have stated, that the offender had become radicalised, and there were a number of examples of that within the posts. For example, there were multiple photos on the Kay Adam Facebook account which included an image with the caption "A call to Hijrah" and still images of the aftermath of terrorist bombings in Tunis in November 2015.

10. On 15 November 2015, the offender posted:

"So the Muslims in the West wanna have a cry and a moan and condemn and pay and speak out for a handful of Kafirs in France compared to Syria which has had way more killed but their lives do not matter to the Muslims that ally themselves with the West." [sic]

This post came some two days after the coordinated terrorist attacks in Paris which had murdered 130 people. In addition, the offender, using the name Kay Adam, had "liked" on Facebook multiple persons or images associated with extremism.

11. Some of the posts within Count 1 contained extracts from a speech made by Al-Adnani. Some posts amounted to indirect encouragement, for example, a post containing a quotation and a poster praising the sacrifices of the Mujahideen. Some involved direct

encouragement, for example, a post containing a quotation encouraging the sons of IS to sharpen their determination and attack, as glory stands before them.

12. Counts 2 and 3 relate to posts made on 14 and 15 October. Count 2 provided a link to an English translation of Al-Adnani's latest speech. This post had received 26 likes by the time comments were recovered. On the second date, the offender posted a link to an audio version of the same speech in response to a request made by a fellow member. This received 43 likes and responses. Having made a series of posts in relation to the speech, the offender commented admiringly on the speech and continued:

"You can almost feel and taste the implications of his words, because you know the actions that will follow, and they aren't empty or futile words ... truly inspiring."

13. The speech amounts to the direct encouragement of acts of terrorism. It is a defence of the actions of Isis, a call to arms to Muslims and an exposition of pervading hatred of non-Muslims who, as a group, are said to deserve a fate in hell. It urges the slaughter of all enemies of IS by the Mujahideen:

"... by iron and fire, by stabbing, wounding and fighting the Kuffar day and night. The law of Allah will not be established except upon the skulls, corpses and blood of the Mujahideen, the truthful and sincere Muwahhidin."

14. Count 4 was a message posted on 19 October, containing a link enabling access to speeches of Al-Adnani and another individual, accompanied by a message praising those speeches, which themselves contain clear encouragement to terrorism. The link to the speeches was provided by a website known as Halummu. The Crown accepted that the offender intended to link to the speeches and not to the wider content of the website itself. That wider content represented an extensive online library of terrorist publications in different formats. The Attorney General fairly accepted that it could not safely be said that that part of the website was readily accessible to others by means of this post. The

offender's basis of plea made plain that she was unaware that what she had done was to provide potential access to this wider range of material. That is not in dispute.

15. The offender was arrested on 14 July 2016, some eight months after she had last posted. She made no comment when interviewed and was bailed. She was charged on 25 April 2017 and remanded in custody, where she remained until sentence some six and a half months or so later. The offender, who is aged 40, has no previous convictions. There was no pre-sentence report before the judge, nor is there a report before us. However, we have seen a lengthy letter written to the judge by the offender, which sets out much of her history and background and which was accepted as genuine by the judge. There was also a letter from the offender's sister, who is a responsible person, which described the offender's difficult upbringing, in which she played the role of mother to her siblings; her excellent skills as mother to her own children; the difficult personal circumstances in which the offender found herself prior to this offending; and the out of character nature of what the offender did. There is a letter from one of the offender's daughters describing the serious impact of custody upon the five children, and there is an excellent reference with supporting documentation from a tutor at the offender's prison, describing highly praiseworthy activity as a classroom assistant in the education department. By the standards of prison references, it is exceptionally good.
16. The Attorney General has argued that these were serious offences, since they were intended to encourage others to commit terrorism in support of IS, an organisation which represents a real danger to the public worldwide and whose aims include the destruction of states based on freedom, equality, democracy and the rule of law. Moreover, the offender had used a false name to avoid detection, which required substantial investigation in order to trace this offender. The gravity of her repeated statements of support for a terrorist

organisation was high, where an effective means of spreading terrorist propaganda had been used and where harm was foreseeable. In the circumstances, after a trial, the Attorney General contended that there should have been a starting point of at least four years. Even allowing for strong personal mitigation, an immediate custodial sentence was required, so that the overall submission was that the duration and the suspension of a sentence of imprisonment were unduly lenient.

17. On behalf of the offender, it was contended that the sentence was not unduly lenient. The judge had been entitled to take account of the strong mitigation available, whose cumulative effect was to make this an exceptional case. Account should be taken of the offender's role as a sole carer for her children and the effect on them of a further return to custody for this offender, who had already served the equivalent of a prison sentence a little in excess of 12 months for these matters.
18. There are at present no guidelines relating to terrorism offences provided by the Sentencing Council, although some are expected a little later this year. Accordingly, we were referred to a number of authorities. R v Rahman & Mohammed [2008] EWCA Crim 1465 was concerned with section 2 offences. It shows that the court should have regard to section 143(1) of the Criminal Justice Act 2003, which provides that in considering the seriousness of an offence, the court must consider the offender's culpability and any harm caused, intended to be caused, or which might foreseeably have been caused. The case also shows that an offence committed intentionally, as opposed to recklessly, is likely to render an offender more culpable, and that the volume and content of the material disseminated will be relevant to an assessment of harm. At paragraph 8, the court said that sentences should reflect the need for deterrence in terrorist cases, but that care must be taken to ensure that the sentence is not disproportionate to the facts of the individual case

and the circumstances of the offender.

19. In R v Kahar & Others [2016] EWCA Crim 568 the court was primarily concerned with giving guidance for offences contrary to section 5 of the 2006 Act. However, there are factors at paragraph 19 which are capable of more general application. In this case, a consideration of the time over which the activities were carried out, the depth of the offender's radicalisation, and the extent to which she was responsible for indoctrinating others or exposing them to the risk of indoctrination are all relevant factors. Kahar also confirms the principle that each case depends on its own facts, whilst subject to the overall position that those who are involved in terrorist offences can expect severe sentences. At paragraph 23, the court noted that the effect of mitigating factors, including any voluntary disengagement, will be highly fact sensitive.
20. In R v Runa Khan [2015] EWCA Crim 1341 the court was concerned with four offences contrary to section 2. That decision confirms that intentional conduct adds to the gravity of the offending. That case is acknowledged by the Attorney General to have been significantly more serious than the present case, because there was more evidence of direct encouragement of terrorism and, importantly, because the evidence in that case showed a deep commitment to the radicalisation of young children, including the offender's own children. Much of the mitigation available in the present case was absent from Runa Khan, and we are alive to the need to assess each case on its own merits.
21. We have considered R v Alamgir & Others [2018] EWCA Crim 21 which is concerned with the analogous area of offences contrary to section 12 of the Terrorism Act 2000. In that case, the court referred to relevant factors as including the type of activity involved, the persistence of efforts to gain support, the size and nature of any audience, the extent to which support was gained or likely to be gained, and a consideration of whether there were

any immediate consequences of the offender's activity.

22. Finally, we considered R v Golamaully [2017] EWCA Crim 898. In that case, the offender admitted a single offence of providing money to another to be used for the purposes of terrorism. A sentence of 22 months was reduced to one of eight months' imprisonment, which equated to time served by the time of the appeal hearing. The court chose to exercise compassion, primarily in the light of a consideration of the effect of incarceration upon the offender's four children, the court having taken the view that it could not be argued that "cases of this kind do not require immediate custodial sentences".
23. We bear in mind those various matters extracted from the foregoing cases as we approach this case. This was undoubtedly a serious case. This offender acted intentionally in encouraging terrorism or disseminating terrorist publications over a period of two months in which she promulgated or promoted terrorist activity. It is clear that at that time she was strongly committed to the terrorist mindset. Her audience, although a closed group, was an expanding one, and numbered over 1,000 by the time her activities ended. It is clear that, at the least, others approved of and responded positively to what she had posted. Given the nature of the audience and the need to be vouched for before a person could join the group, it can be inferred that the group represented fertile ground for the messages sent out and that at least some will have been confirmed in their support for terrorism. One of the evils of promoting material of this sort is that it tends to normalise and render acceptable the terrorist mindset in a way that can only have the effect of making it more likely that some will take positive action. There is, however, no specific evidence that any individual took positive action as a result of receiving the materials posted by this offender.
24. All of those matters show a case of some gravity, albeit not in our judgment at the upper levels of the range in terms of harm. The offender's mindset, persistence and intentional

conduct demonstrate a high level of culpability. In our judgment, therefore, a starting point of around four years, as submitted by the Attorney General, would be appropriate. Such a figure would encompass the aggravating factor of the use of a pseudonym.

25. Of course, allowance must then be made for mitigation and guilty plea. There is powerful mitigation in this case, represented by an accumulation of factors. The offender, at 40, is a woman without previous convictions. It was accepted in the court below, and is not challenged today, that the evidence goes further and establishes a positive good character prior to the commission of these offences. Importantly, the offender's letter to the sentencing judge was accepted as evidence of genuine remorse, and the gap of eight months between her last activity within the group and her arrest represented a voluntary cessation of her criminal activity. That remorse and that desistance combine to represent a change of mindset which, as Kahar recognised, is a relevant mitigating factor.
26. The sentencing judge went further and concluded that on the basis of the materials he had seen there was no danger of future offending, and that this offending in the context of the offender's life overall was not indicative of her true character. That has not been challenged, and at the very least shows that this offender, by the time she came to court, had fully put behind her the gross aberrations of autumn 2015.
27. Whilst the offender had undoubtedly suffered from difficult personal circumstances prior to beginning her offending, that is not a factor which weighs greatly with us, given the gravity of what she chose to do.
28. In addition, this offender has earned a truly excellent prison report, describing her work in the classroom in assisting others to learn English. This confirms her change of mindset and is consistent with her pre-offending character. The decision of this court in R v Petherick [2012] EWCA Crim 2214 requires a consideration of the position of this

offender's children, since she is their sole or primary carer. From the material before us, it is clear that the offender's spell in custody had a significant effect upon those five children.

29. Putting aside the question of those children for the moment, the other mitigation in our judgment would have combined to bring the sentence in this case down to around 30 months. Full credit was granted for an early guilty plea, so that the custodial term is reduced further to a period of around 20 months, which is a little less than the trial judge's assessment.
30. In our judgment, cases involving terrorism related offences will ordinarily carry immediate custodial sentences, particularly where the conduct is intentional and where it has been persistent and repeated, as it was here. The mitigation and early guilty pleas, as demonstrated above, serve substantially to reduce the term, prior to considering two additional important factors in this case. Firstly, there is the position of this offender's children, who undoubtedly suffered and who were separated from one another during the period served on remand. If the offender were returned to custody by order of this court, they would be separated for a second time, with further concomitant harmful effects upon them. The case of Petherick may operate either to reduce a custodial term or to justify suspension of sentence.
31. The second additional factor is that this offender has already served something approaching the equivalent of a 13 month sentence. Were we to reduce the figure of 20 months to reflect the situation of this offender's children, the reality is that she would serve little or no additional prison time. When the harms and benefits of such a course are weighed, the balance comes down in favour of the children in those circumstances. There would be no good purpose in taking such action.
32. Whilst in our judgment this case could and should have been met by an immediate

custodial sentence so as to reflect the nature and gravity of the offending, that sentence could properly have been equated to time already served; that is to the equivalent of a term slightly under 13 months.

33. In the circumstances, whilst we consider that this reference has been properly brought, and accordingly give leave, for the reasons stated, any change in the sentence would have no practical effect. We therefore exercise our discretion not to interfere with the sentence imposed below.

WordWave International Ltd trading as DTI hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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